

IN THE HIGH COURT OF NAMIBIA

Case Title: Pio Marapi Teek vs The Minister Of Safety And Security and Others	Case No.: (HC-MD-CIV-ACT-CON-2019/01427)
	Division of Court: High Court (Main Division)
Heard before: Lady Justice Claasen, Acting	Date of hearing: 14 October 2019
	Delivered on: 04 November 2019
	Reasons: 6 November 2019
Neutral citation: <i>Teek v Minister of Safety and Security</i> (HC-MD-CIV-ACT-DEL-2019/01427) [2019] NAHCMD 455 (6 November 2019)	
The Order: Having noted no appearance on behalf of the plaintiff and no appearance on behalf of the defendants to note the ruling on the interlocutory application and having read the Application for HC-MD-CIV-ACT-DEL-2019/01427 and other documents filed of record: IT IS ORDERED THAT: <ol style="list-style-type: none">1. The exception on the ground that the amended particulars of claim do not disclose a cause of action is dismissed.2. The exception on the ground that the amended particulars of claim are vague and embarrassing is upheld.3. The costs of the exception is to stand over for determination by the trial court.4. The plaintiff is granted an opportunity to amend its amended particulars of claim within 15 court days of the order.5. The matter is postponed to 3 December 2019 at 9h00 for a case planning conference.	

6. The parties are directed to file a joint case plan no later than close of business on **28 November 2019**.

Reasons for Ruling: Practice Direction 61(9)

Introduction

[1] Before me is an exception raised by the defendants in respect of the plaintiff's amended particulars of claim.

[2] The exception is raised on two grounds. In respect of the contention that the particulars are vague and embarrassing, it was stated that it is not clear whether the allegations in paragraphs 3 to 5 and paragraph 9 are separate causes of action and it is not clear whether the claim is predicated solely on the basis of Article 12 of the Namibian Constitution.

[3] Secondly, the defendants contend that the claim for financial loss discloses no cause of action.

Particulars of Claim

[4] The plaintiff instituted summons for the defendants to pay jointly and severally a total amount of N\$ 23 160 000-00 for claims that the plaintiff collectively refers to in paragraph VI of the amended particulars of claim as financial and constitutional damages and compensation. The amended particulars of claim is an elaborate document which I will attempt to out in a condensed form.

[5] Part A of the plaintiff's particulars of claim alleges that the first to third defendants destroyed and fabricated evidence against the plaintiff. It is further alleged that the police has maliciously failed to properly investigate the case against the plaintiff.

[6] Part B of the plaintiff's amended particulars of claim alleges that the fourth to eighth defendants behaved improperly in the conduct of the criminal case against the plaintiff, in that the prosecution misrepresented the State's evidence, made misleading submissions, persisted with the prosecution after the plaintiff closed its case, and maliciously delayed the prosecution's case and appeals.

[7] The plaintiff cited the Registrar of the High Court and alleged that she failed to comply with her statutory

duties by not providing reasons for the delay regarding the enrolment of the criminal case and appeals and not forwarding the court's judgment to the police and the Minister of Justice.

[8] The allegation against the Minister of Justice is that he failed to put in place legislation to facilitate the enforcement of the plaintiff's claims against the foreign justices, who presided over the plaintiff's criminal appeal.

[9] Part C of the plaintiff's amended particulars of claim alleges that the fourth to the seventh defendants unlawfully and intentionally misrepresented evidence at trial and that the 5th defendant maliciously persisted to prosecute the plaintiff after the close of the State's case.

Defendants' Submissions

[10] Counsel for the defendants submits that it is unclear how the allegations against the police and the Minister of Justice relate to the plaintiff's claim of a violation of the right to a fair and speedy trial. Counsel further submits that it is unclear whether the allegations against the police, the Minister of Justice and the Registrar constitute separate causes of action in addition to the claim for violation of the right to a speedy trial. Counsel further submitted that it is unclear whether the allegations against the prosecution with respect to their alleged conduct during the trial, are separate causes of action or whether it forms part of the violation of the right to a speedy trial.

[11] In the result, counsel for the defendants submits that the defendants are unable to ascertain the case they are to meet and are unable to plead thereto.

[12] Regarding the claim for financial loss, counsel for the defendants' view is that it does not disclose a cause of action. In support of the argument counsel maintained that the claim rests on hope and speculation and that the loss was not caused by the defendants.

Plaintiff's Submissions

[13] In essence, the plaintiff submits that the causes of action as alleged in the amended particulars of claim are based on proven primary evidence as adduced by the State as incontrovertible facts on record and the resultant criminal judgment given in favour of the plaintiff.

[14] Plaintiff argued that the exception is merely to delay the speedy progress of the finalization of the case and is therefore reprehensible and culpable on the part of the defendants. Plaintiff also made submissions that he reached out to the defendants' counsel in order for them to deal with possible issues in respect of the intended amended particulars of claim but it was to no avail.

[15] In the result, plaintiff submits that the exception be dismissed with costs, on the grounds that the exception raised is baseless, vague and embarrassing and frivolous.

Legal Principles on Exceptions

[16] In *Van Straten No and Another v Namibia Financial Institutions Supervisory Authority and Another*,¹ the Supreme Court held the following:

[18] Where an exception is taken on the grounds that no cause of action is disclosed or is sustainable on the particulars of claim, two aspects are to be emphasized. Firstly, for the purpose of deciding the exception, the facts as alleged in the plaintiff's pleadings are correct. In the second place, it is incumbent upon an excipient to persuade this court that upon every interpretation which the pleading can reasonably bear, no cause of action is disclosed. Stated otherwise, only if no possible evidence can be led on the pleadings can disclose a cause of action, will the particulars be found to be excipiable.

[19] Whether an exception on the ground of being vague and embarrassing is established would depend upon whether it complies with Rule 45(5) of the High Court Rules. This rule requires that every pleading must contain a clear and concise statement of the material facts on which the pleader relies for his or her claim with sufficient particularity to enable the opposite party to identify the case that the pleading requires him or her to meet. Assessing whether a pleading is vague and embarrassing is now to be undertaken in the context of Rule 45 and the overriding objectives of judicial case management. Those objectives include the facilitation of the resolution of the real issues in dispute justly and speedily, efficiently and cost effectively as far as practicable by saving costs by, among others, limiting interlocutory proceedings to what is strictly necessary in order to achieve a fair and timely disposal of a cause or matter.

¹ 2016 (3) NR 747 (SC).

[20] The two-fold exercise in considering whether a pleading is vague and embarrassing entails firstly determining whether the pleading lacks particularity to the extent that it is vague. The second is determining whether the vagueness causes prejudice. The nature of the prejudice would relate to an ability to plead to and properly prepare and meet an opponent's case. This consideration is also powerfully underpinned by the overriding objects of judicial case management in order to ensure that the real issues in dispute are resolved and that parties are sufficiently apprised as to the case that they are to meet.'

Disposal

[17] The following definition of 'cause of action' was adopted by the Appellate Division in *McKenzie v Farmers' Co-operative Meat Industries Ltd*²:

' . . . every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to judgment of the Court. It does not comprise every piece of evidence which is necessary to prove each fact, but every fact which is necessary to be proved.'

[18] In respect of the defendants' contention of no cause of action, I disagree with the excipients. In reading parts II, III, IV and VI of the amended particulars of claim collectively, the impression is created in the averments that as a result of the different actions of the defendants, the plaintiff's rights under the Constitution were infringed and thus the claim appears to be predicated on constitutional damages.

[19] I move on to the next ground on which the exception was based. In applying the criteria of Rule 45(5) of the High Court I am in agreement with the excipients that the amended particulars of claim falls short of the requirements.

[20] The amended particulars of claim incorporates a factual background and genesis of plaintiff's claims that extends over several pages, which in my opinion constitutes evidence. In the same vein, the purpose of including a résumé in the pleading is not clear. The purpose of pleadings is to delineate the issues and not to obfuscate them.

² 1922 AD 16 at 23

[21] In *Mokono v Nguvauve*³ it was stated:

'The general rule is that a plaintiff must allege the facts upon which he/she relies and not the evidence.'

[22] Furthermore the various claims do not differentiate between general or special damages.

[23] Therefore the statement of facts in the amended particulars of claim does not clearly and concisely set out the material facts with sufficient particularity to enable the defendants to plead to the claims.

[24] In the premise the following order is made:

1. The exception on the ground that the amended particulars of claim do not disclose a cause of action is dismissed.
2. The exception on the ground that the amended particulars of claim are vague and embarrassing is upheld.
3. The costs of the exception is to stand over for determination by the trial court.
4. The plaintiff is granted an opportunity to amend its amended particulars of claim within **15 court days** of the order.
5. The matter is postponed to **3 December 2019 at 9h00** for a case planning conference.
6. The parties are directed to file a joint case plan no later than close of business on **28 November 2019**.

Judge's signature		Note to the parties:	
		Not applicable	
Counsel:			
Plaintiff		Defendants	

³ 2003 NR 138 HC

In person	N Marcus Instructed by Government Attorney
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